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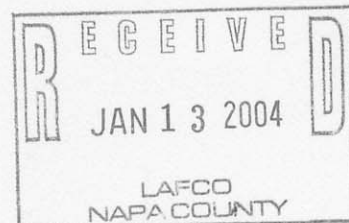
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File Nos: 199/6

January 8, 2003



Via Telecopier and U.S. Mail
(707) 251-1053
dschwarz@napa.lafco.ca.gov

Mr. Daniel Schwarz
Executive Officer
Local Agency Formation Commission
of Napa County
1700 2nd Street, Suite 268
Napa, California 94559-3082

Re: Proposed Mitigated Negative Declaration; LAFCO Of Napa County / City Of
American Canyon; Sphere Of Influence Update

Dear Mr. Schwarz:

This communication comments on behalf of the City of American Canyon ("City") on the proposed Mitigated Negative Declaration ("MND") prepared by the Local Agency Formation Commission ("LAFCO") of Napa County with respect to a LAFCO Project designated as "LAFCO Napa County American Canyon Sphere Of Influence Update."

The action contemplated by LAFCO is amendment of the Sphere Of Influence ("SOI") of the City with respect to four geographic areas designated as:

- Area No. 1, Property of the Napa Valley Unified School District;
- Area No. 2, Watson Lane;
- Area No. 3, Green Island Road; and,
- Area No. 4, Eucalyptus Grove.

The City maintains that both the proposed MND and the underlying analysis for the MND are legally inconsistent with provisions of the Cortese-Knox-Hertzberg Local Government

Reorganization Act of 2000 (Government Code Section 56000 *et seq.*, the "Act") and the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*, "CEQA").

I. SPHERE OF INFLUENCE DEFINED

A SOI is a "plan for the probable physical boundaries and service area of a city or special district." Government Code section 56076. When formulating *or amending* a SOI, a Statement of Determinations must be adopted [Government Code section 56425(a)], which considers and makes findings on the following issues:

- A. The areas present and planned land uses;
- B. The areas present and planned need for public services and facilities;
- C. The agency's present capacity to provide the public services and facilities at issue; and,
- D. Any social or economic communities of interest in the area.

Accordingly, the "action" or "activity" of LAFCO that is to be examined with respect to the applicability of CEQA is the City's capacity to provide public services and facilities for the present and planned uses within the four amendment areas.

II. THE PROPOSED MITIGATED NEGATIVE DECLARATION

The Initial Study ("IS"), which serves as the basis for the proposed MND, consists of 81 pages. The IS Project Description sets forth a summary of the statutory requirements for a SOI determination and describes in detail the four amendment areas. But then, contrary to the provisions of Government Code section 56425(a), the IS Project Description states, ". . . the potential development anticipated by city planning documents for the four SOI areas is considered the 'project.'" IS, p. 3.

The IS identifies nine areas where the described action could result in at least one "potentially significant impact" on the environment, which would be "less than significant with incorporation of mitigation." Those nine areas are: (A) Aesthetics; (B) Air Quality; (C) Biological Resources; (D) Cultural Resources; (E) Geology and Soils; (F) Hazards and Hazardous Material; (G) Hydrology and Water Quality; (H) Noise; and, (I) Transportation and Traffic. IS, p. 7.

The IS includes among its sources the City's General Plan, the General Plan EIR, as well as an undesignated Napa County General Plan and Napa County Zoning Ordinances. IS, p. 7.

IS Section 14, entitled "Evaluation Of Environmental Impacts," deals with each of the nine (9) areas in the same format. Utilizing questions from the CEQA Guidelines (Appendix G) checklist for determining impact on the environment, each substantive impact area is evaluated. IS, Section 14, pp. 9-81.¹

The following are summaries of the areas of identified impact.

A. *Aesthetics.* The IS indicates that the "Project" could result in less than significant impacts on light and glare with incorporation of mitigation which is described in part in Mitigation Measure A-4, as follows:

Prior to annexation to the City of territory within the sphere of influence, LAFCO shall require that the City of American Canyon City Council, *as the land use regulatory authority*, adopt a policy that includes a plan to reduce potential light, glare and light pollution impacts to less than significant levels.²

IS, p. 10 (emphasis added).

B. *Air Quality.* The MND IS analysis concedes jurisdiction to the Bay Area Air Quality Management District ("BAAQMD") [IS, p. 13], but, nonetheless, indicates that there will be a less-than-significant impact with the incorporation of mitigation with

¹ Again, the MND concludes that the SOI Amendments are a "Project" under CEQA, after referencing the SOI definition as well as the new requirement of accomplishing a Municipal Service Review ("MSR"). *See*, Government Code section 56430. IS, p. 2. The MND does not subsequently reference the conclusions of the MSR with respect to City service capabilities.

² The common mitigation phrase, "... prior to annexation . . .," which is uniformly used in the mitigation measures described, conflicts with the Project Description of "potential development" within the City in that it is a different "action" of LAFCO. It appears that the combination of these two actions may serve as the basis for noncompliance with the Act and CEQA.

implementation of the Project, which is set forth as Mitigation Measure C.1 [IS p. 16] and C.4, which provides in part as follows:

Prior to annexation to the City of territory within the Sphere of Influence, LAFCO shall require the City of American Canyon City Council, *as the land use regulatory authority*, to adopt a policy that includes measures to reduce construction-related dust generation and associated air quality impacts.

IS, p. 19 (emphasis added).

There is the additional Mitigation Measure, C.5, which provides in part:

Prior to annexation to the City of territory within the Sphere of Influence, LAFCO shall require the City of American Canyon City Council, *as the land use regulatory authority*, to adopt a policy that includes measures to reduce potential objectionable odors and associated air quality impacts.

IS, p. 19 (emphasis added).

C. *Biological Resources.* IS Section 14.D, entitled "Biological Resources," also concludes that there would be a less-than-significant Project impact on the environment if there is mitigation imposed, Mitigation Measure D.1, which provides in part:

Prior to annexation to the City of territory within the Sphere of Influence, LAFCO shall require the City of American Canyon City Council, *as the land use regulatory authority*, to adopt a policy that includes a plan to conduct biological and wetlands assessments to identify the presence or absence of populations of special-status species, sensitive natural communities, wetlands resources, and important wildlife habitat or movement corridors.

IS, p. 26 (emphasis added).

An additional biological resources Mitigation Measure, D.3, provides:

Prior to annexation to the City of territory within the Sphere of Influence, LAFCO shall require the City of American Canyon City Council, *as the land use regulatory authority*, to adopt a policy that includes a plan to identify wetlands and to reduce potential impact on such wetlands to less-than-significant levels.

To be deemed complete pursuant to Govt. Code Section 56658, LAFCO shall require that the proposal for annexation demonstrate that the American Canyon City Council will impose the requirements for a wetlands assessment and mitigation plan to provide for the replacement of lost wetlands, prepared by a qualified wetlands specialist. The replacement plan should consider a net increase in both acreage and value of wetland habitat lost as a result of development and shall address the approval requirements of the Corps, CDFG, and the Regional Water Quality Control Board (RWQCB), subject to the provisions of § 404 of the Clean Water Act and §§ 1601 -1606 of the CDFG Code. The plan should consider the coordination of any proposed modifications to wetlands and other waters with representatives of the CDFG and core to insure that the concerns and possible requirements of both agencies can be easily incorporated into the proposed plan.

IS, p. 27 (emphasis added).

D. Cultural Resources. The next area of claimed impact is that associated with cultural resources wherein an extensive mitigation measure is proposed, E-1 which contains the same prefatory language requiring the adoption of a policy by the City Council as a land use regulatory authority to conduct sites specific archaeological and historical surveys of the SOI areas conducted by qualified archaeologists or historians. IS, pp. 28-30.

E. Geology and Soils. With respect to the next area of identified impact, geology and soils, there is also a conclusion that mitigation measures will render the impact less than significant if mitigation is imposed. The mitigation measures, again utilizing the same prefatory language with the City Council acting as a land use regulatory authority indicates that the requirement of the adoption of a land use regulatory policy that includes preparation of site specific geologic and/or soils investigations overseen by a state certified engineering geologist and/or geotechnical engineer be accomplished. IS, pp. 31-35. Additionally, mitigation measure F.4 requires the adoption of a policy to include a plan to identify and reduce hazards associated with expansive soils. IS, p. 35.

F. Hazards and Hazardous Material. With respect to the identified impact of hazards and hazardous material, again, an extensive mitigation measure is set forth, Mitigation Measure G.2

[IS, p. 38], which would require the City Council, as a land use regulatory authority, to adopt a policy that requires a Phase 1 (and, if necessary, a Phase 2) environmental site assessment to be performed on the subject property, with an assessment scope that is relevant to any proposed development and with specific qualified duties.

G. *Hydrology and Water Quality.* With respect to the claimed hydrology and water quality impact, Mitigation Measure H.1 is proposed. Again, the same phraseology requiring the City Council as the land use regulatory authority to adopt a policy that includes the provision of an erosion control program which incorporates standard Best Management Practices appropriate for erosion and chemical controls at development sites is used. This mitigation measure is followed by five pages of specific indications with references to the City General Plan policies that would minimize these concerns. IS, pp. 41-46.

Inconsistently, the IS indicates that the four (4) areas covered by the SOI Amendments would have no impact with respect to land use and planning utilizing phrases which include “the proposed SOI expansion would not conflict with any adoptive plans, including habitat conservation plan, natural community conservation plan or other approved regional or state habitat conservation plan. IS, pp. 46-47. (This confirms an earlier finding in the IS Checklist Item D.6, which concludes to the same effect.)

H. *Noise.* The analysis dealing with claimed noise impacts, IS, pp. 47-52, even though noting that the County has adopted the County Noise Control Ordinance, sets forth three specific mitigation measures all utilizing the same prefatory language of the City Council acting as land use authority: (1) to adopt a specific development standard dealing with industrial development on existing residential uses; (2) to address the traffic-generated noise on residential usage; and, (3) to adopt a plan to reduce construction-related noise on impact.

I. *Transportation and Traffic.* The last area of identified impact is that of Transportation and Traffic. IS, pp. 58-76. Again, utilizing the same phraseology, the requirement for adoption by the City Council of *development standards* is set forth in mitigation including the construction of specified project transportation linkages including the extension of Flosden Road. IS, p. 74.³

It can be generally observed that both the assessment of areas of potential impact and their mitigation are described on a “clinical” and, apparently, selective basis, that is, without consultation with the City which, if accomplished, would indicate that the precise type of policies and

³ Even though the SOI Amendments authorize no development (*see*, IS, p. 3), the IS analysis includes specific trip generation calculations. IS, pp. 65-72.

implementation called for in each of the land use development policy mitigation measures already exists.

This fact is confirmed by, among other things, LAFCO's Resolution of Adoption of the City MSR dated April 2003.⁴ Again, the inconsistent conclusions of the MSR about the adequacy of City service and facility capabilities are not factored into the IS analysis. The City respectfully suggests that LAFCO is bound by this prior determination, unless any facts concerning the City's service and facility capabilities have changed, which they have not.

III. LAFCO ACTIONS OR ACTIVITIES: COMPLIANCE WITH CEQA

An initial issue is whether the LAFCO action contemplated, the SOI Amendments, is a "project" under CEQA. There are two components to a "project" being present under CEQA. First, is that it be an activity that may cause a direct or reasonably foreseeable indirect physical environmental change. Second, is that it must be an activity or an action undertaken by a public agency, including an activity involving the issuance by a public agency of some form of entitlement, authorization or permit. Public Resources Code section 21065.

Here, the adoption of the SOI Amendments, which is a determination of the capability of the City to furnish governmental services and facilities to the involved geographic area, does not result in *any* physical change to the environment.

The IS concedes this status stating:

Approval of the proposed project (changes to the American Canyon SOI) would not in and of itself result in development.

IS, p. 3.

⁴ A portion of the Resolution provides as a Commission determination:

The general administration of the City is capable of offering appropriate levels of service to current and future populations, and capable of extending its services into newly-annexed territory.

Accordingly, in the first instance, the City would maintain that the SOI Amendments are not an action or activity which constitutes a "project" under CEQA, thereby obviating the need for environmental review by way of the proposed MND.

The issue as to whether a SOI is subject to review under CEQA was examined in *City of Agoura Hills v. Local Agency Formation Comm'n*, 198 Cal.App.3d 480, 490-491 (1988), which held that a SOI determination of a city was *not* a "project" subject to CEQA where the SOI decision could not have a significant effect on the environment.

Because the assumption here as to the potential impact on the environment is based on development authorizations that have not yet occurred,⁵ *and cannot occur with the approval of the SOI Amendments*, the *City of Agoura Hills* holding is controlling and the need for analysis under CEQA is not present.

Certain LAFCO actions (not including SOI determinations) are subject to review as "projects" under CEQA. However, two categorical exemptions are applicable to LAFCO actions generally:

- A. Governmental reorganizations are exempt if they do not change the area in which previously existing powers were exercised, including establishment of a subsidiary district, consolidation of two districts, or a merger of a district within a city into that city. CEQA Guidelines § 15320; and,
- B. Annexation of areas containing structures developed to the density allowed by current zoning are exempt as long as any utility services are designed to serve only existing development. CEQA Guidelines § 15319(a).

As these exemptions are associated with *boundary* changes – that is, changes of organization such as annexations, which must be preceded and be consistent with an adopted SOI, the exemptions support the conclusion that the SOI Amendments are not an action which constitutes a "project" under CEQA. Assuming, for purposes of argument, that the SOI Amendments are a "project" under CEQA, then they should be found to be exempt.

⁵ See, Section II, *supra*, concerning the Project Description.

IV. METHODOLOGY OF SOI ANALYSIS UNDER CEQA AND THE ACT

The methodology of the analysis under CEQA for the SOI Amendments does not examine all the factors set forth under Government Code section 56425(a). For example, the MND does not consider a significant economic community of interest – that of the American Canyon Fire Protection District (“District”) – a subsidiary District of the City which, prior to incorporation in 1992, was a special district that existed in the area from 1957.

As one component of delivery of essential governmental services to the SOI Amendment areas, some of which are already within the District and some which are not, the SOI analysis should include an analysis of the relationship of the SOI Amendments to their existence within current District boundaries.

A continuing theme of analysis, which is contrary to law, is the assumption that LAFCO can impose mitigation measures, again assuming that there is a “project” which is not otherwise exempt under CEQA, that deal with the City’s land use authority.

As each of the mitigation measures proposed indicate that substantive action shall be accomplished by the City “. . . acting as a land use authority” The mitigation measures substitute LAFCO’s judgment on land use matters for that of the City – *something which is expressly prohibited*. Government Code section 56375(a).

The mitigation measures also are not authorized by CEQA.

V. MITIGATION CAN ONLY BE IMPOSED IF AUTHORIZED BY LAW

Mitigation measures which exceed the authority granted by law on lead and responsible agencies are *legally infeasible*. *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291. CEQA does not in and of itself serve as a source of substantive mitigation.

The CEQA Guidelines define mitigation to include:

- A. Avoiding an impact altogether by not taking a certain action or part of an action;
- B. Minimizing an impact by limiting the magnitude of a proposed action and its implementation;

- C. Rectifying an impact by repairing, rehabilitating, or restoring the effected environmental resource;
- D. Reducing or eliminating an impact over a period of time through preservation or maintenance operation during the life of the action; and,
- E. Compensating for the impact by providing substitute resource or environment. CEQA Guidelines Section 15370.

Given this definition of "mitigation," it is hard to understand how the "action" of determining the effectiveness and capability of City services and facilities to the SOI Amendment areas could be subject to mitigation at all. The extension of City services and facilities to the SOI Amendment areas cannot be avoided, minimized or reduced.

Here, because LAFCO is prohibited from imposing development conditions, each of the mitigation measures proposed is beyond the power of LAFCO not only because of the prohibitions of Government Code section 56375, but also because of the limitations of CEQA itself just articulated.

Further, the substance of portions of the mitigation measures conflict with CEQA, as the measures that are required are beyond the control of the City to accomplish. For example, the City currently requires all new development to comply with all applicable laws. This would include regulations of the Regional Water Quality Board, the Bay Area Air Quality Management District, the State Department of Fish and Game, the United States Army Corps of Engineers, and the San Francisco Bay Conservation and Development Commission.⁶

To suggest that there is a need for overlapping or substantive regulation concerning areas of jurisdiction completely controlled by these other governmental agencies, is outside the purpose of a SOI – that of determining the viability of extension of governmental services and facilities of the City to the involved areas and would constitute an idle act, as the mitigation measures assume an

⁶ In fact, the City has pursued on a consistent basis with respect to new development that any project comply with all applicable and environmental laws or regulations that are at issue. This has been held to serve as adequate mitigation of identified environmental impacts. [*See, Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d. 1337, 1355; *Sunstrom v. County of Mendocino* (1998) 202 Cal.App.3d. 296-308.]

unknown developer and assume that the City's development planning criteria would remain the same as they presently exist.

A further indication of the impropriety of the MND method of analyzing the purported environmental impact analysis of the SOI Amendments is the issue of who (or what) would "agree" or make the revisions in the Project plans, so as to actually constitute a MND under Public Resources Code section 21064.5 and CEQA Guidelines section 15369.5. Again, the LAFCO action contemplated is amendment to a SOI, not development by some unknown developer under some yet-to-be-confirmed development standards of the City in the future. Therefore, as a matter of law, the definitional characteristics of a MND cannot be met.

VI. ISSUES OF LAFCO STAFF

The City understands that LAFCO staff has specific concerns with several aspects of the land use development policies of the City. This communication has already addressed the limitations of LAFCOs with respect to land use issues. However, the following factual summary addresses the LAFCO staff concerns.

First, it is noted that the City has for ten years – since the adoption of its General Plan – consistently imposed and implemented the General Plan policy indicating that all development must either financially secure or provide its proportionate fair share of infrastructure as is related to the intensity and type of use.

Since the adoption of the City's General Plan, there have been both objectives and policies of implementation which are consistent with the concept that *any* land use development must be coordinated with the ability to provide adequate public infrastructure, as well as services necessary to support the specific land use authorized by the City Land Use Plan. A further implementing provision is that if existing public infrastructure is inadequate or the services are inadequate, development must be timed so that it does not occur until that inadequacy is cured.

These General Plan Objectives and implementing Policies have been applied as a consistent administrative practice of the City with respect to development authorizations.

These critical facts address, on a practical and pragmatic basis, the concerns of LAFCO which, again, would not materialize, if at all, until a change of organization (annexation) is before the Commission. *See*, City General Plan Objective No. 1.3, Implementing Policies 1.3.1-1.3.6.

Mr. Daniel Schwarz
Executive Officer
Local Agency Formation Commission of Napa County
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Further, it has also been the established goal and objective of the implementing Policies of the City's General Plan to only accomplish development where it "respects the environmental setting" of the involved land use. *See*, General Plan Goal 1.C., Objective 1.4, Policies 1.4.1-1.4.5.

Also, the City has attempted to rely on other enforcement agencies in their areas of jurisdiction. Specific examples of this are associated with Apex Bulk Commodities and Mezzetta Industries, Inc., both of which were subject to Bay Area Air Quality District requests for enforcement and, with the Mezzetta factual situation, also subjected to Regional Water Quality Control Board enforcement. In both instances, the involved agencies' enforcement efforts were not completed and were situations in which the City relied on its own nuisance power to effectuate remedial action.

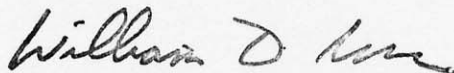
VII. CONCLUSION

Based on applicable law, the LAFCO action contemplated – that of consideration of the proposed SOI Amendments for the City – is not an activity or action which constitutes a "project" under CEQA. Therefore, there is no need for a CEQA analysis. If it is determined that the SOI Amendments are a "project," then the very nature of a SOI determination – that of determining the adequacy of governmental services and facilities to existing or planned development in the concerned geographic areas – should be found to be categorically exempt under CEQA, as it can be determined with certainty that there would be no impact on the environment because no development is authorized.

On a substantive basis, the SOI Amendments should be examined without regard to the imposition of conditions by the Commission on City land use development policies.

City staff remains willing to work with LAFCO staff to expeditiously address Commission consideration of the SOI amendments in a timely manner.

Very truly yours,



William D. Ross

WDR:ng

cc: Mr. Mark Joseph, City Manager
Mr. Ed Haworth, City Planning Director

Mr. Daniel Schwarz
Executive Officer
Local Agency Formation Commission of Napa County
January 8, 2003
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The Honorable Lori Loporini, Mayor
Mr. Cecil Shaver, Vice Mayor
Mr. Ben Anderson, Councilmember
Mr. Donald Colcleaser, Councilmember
Mr. Leon Garcia, Councilmember

Jacqueline Gong, Esq.
LAFCO Counsel

Silva Darbinian, Esq.
Deputy County Counsel
County of Napa



COUNTY *of* NAPA

WILLIAM S. CHIAT
County Executive Officer

NANCY WATT
Assistant County Executive Officer

January 8, 2004

Harry Martin, Chair and Commission Members
County of Napa
Local Agency Formation Commission
1700 Second Street Suite 268
Napa, CA 94559

Dear Chair Martin and Commissioners:

Thank you for the opportunity to comment on your proposed sphere of influence determination. The County of Napa supports the proposed amendments to the City of American Canyon's sphere of influence and urges you to approve those amendments that are included in our agreement with American Canyon.

As you know, the City and County have agreed to transfer a portion of the County's Regional Housing Needs Determination to the City. Under the agreement, LAFCO's approval of the sphere of influence amendments is a condition precedent to the City's acceptance of the County's housing numbers for the current housing cycle.

In negotiating this agreement, the parties were aware of the timing issues associated with environmental review, which is why approval of the sphere of influence amendments rather than annexation was made a condition precedent of the City's acceptance of County housing numbers. Of course, we support the need for CEQA analysis; however, we believe that it would be more appropriately conducted upon submission of annexation proposals. The attached memorandum delineates our position.

We urge you to approve the amendments to the City's sphere of influence and find that there will be no significant environmental impacts associated with these particular amendments. Any delay in approving these sphere amendments is likely to put into jeopardy the landmark housing agreements that were approved unanimously by the Board of Supervisors and the City Councils of American Canyon and Napa.

Thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Chiat", written over the typed name and title.

William S. Chiat
County Executive Officer

WSC:pg
H:WC:LAFCOsphereofinfluencetr

COUNTY EXECUTIVE OFFICE

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INTER-OFFICE MEMO

OFFICE OF COUNTY COUNSEL

TO: Bill Chiat, County Executive Officer

FROM: Silva Darbinian, Deputy County Counsel

RE: Analysis of Proposed Amendments to the City of American Canyon's Sphere of Influence

DATE: January 8, 2004

FILE NO.

We have examined the initial study prepared by the Napa County Local Agency Formation Commission ("LAFCO") in connection with proposed amendments to the City of American Canyon's sphere of influence. We have also reviewed letters submitted by the City of American Canyon ("City") questioning LAFCO's conclusions that the proposed sphere of influence amendments are a "project" under CEQA and objecting to the mitigated negative declaration. The City's conclusions are right on point, and we support the City's analysis.

Every LAFCO is charged with the statutory duty to discourage urban sprawl and to encourage the orderly formation and development of local agencies based on local conditions and circumstances. (Gov. Code §56425) LAFCOs are charged with two essential functions of major significance: approving annexation of land to local agencies and establishing spheres of influence for the local agencies in a county. The sphere of influence is a "plan for the probable physical boundaries and service area of a city or special district." (Gov. Code 56076) "There is nothing final about a spheres of influence plan. Only the 'probable' boundaries of local governmental agencies must be established; the LAFCO must 'periodically review and update the spheres of influence...' (*Bozung v. Local Agency Formation Comm.* 13 Cal.3d 263, 273)

It is clear that not every LAFCO approval of a project is subject to CEQA. (*Simi Valley Recreation and Park Dist. v. Local Agency Formation Com.* 51 Cal.App.3d 648, 663.) Rather, courts will review whether LAFCO approval is a necessary step in a development and whether the approval in effect constitutes an entitlement for use for such development. (*Id.*) "The fact that spheres of influence are recognized as important factors in annexations does not compel the conclusion that they are per se 'projects' subject to CEQA." (*Agoura Hills v. Local Agency Formation Commission* 198 Cal.App.3d 480, 495)

To the extent that the sphere of influence amendments in the present case do not result in any developments and do not change any land use, the sphere of influence amendments would not have a significant effect on the environment. "The evaluation process contemplated by CEQA relates to the

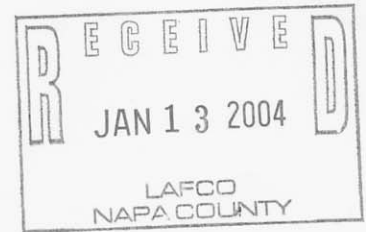
effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund, not to every change of organization or personnel which may affect future determinations relating to the environment." (*Simi Valley Recreation and Park Dist. v. Local Agency Formation Com.* 51 Cal.App.3d 648, 666). The case of *Agoura Hills v. Local Agency Formation Commission* 198 Cal.App.3d 480, is controlling, where the court held that a sphere of influence determination was not a project because no change in land use resulted. (*Id.* at 494) Similarly, in *Simi Valley Recreation and Park Dist. v. Local Agency Formation Com.* 51 Cal.App.3d 648, the court held that no CEQA review was necessary because no change in land use was contemplated.

In the present case, there will be no change in land use and no development will occur without annexation. Amendments to the sphere of influence will not remove the parcels in question from the zoning authority of the county; nor will the amendments create any rights to further development of the parcels. Before annexation could occur, LAFCO requires the subject territory to be rezoned by the City. CEQA review and imposition of mitigation measures, if any, would be more appropriate at the rezoning and annexation stage, but it is premature at this stage simply because we do not know whether the parcels in question will be developed and, if so, how they will be used.

For the reasons set forth in this letter and those addressed in the City's correspondences dated December 29, 2003 and January 8, 2004, we concur with the City that the proposed amendments to the City's sphere of influence could not and do not have any significant effect on the environment and are therefore not subject to CEQA.

Tom McGee, Chairman
Napa Airport Pilots' Association(NAPA)
2036 Airport Road
Napa, CA 94558

Daniel Schwarz, Executive Officer
LAFCO of Napa County
1700 Second Street, Suite 268
Napa, CA 94559



Dear Mr. Schwarz,

I have read the American Canyon Sphere of Influence Review, dated December 11, 2003.
I am concerned that some of the land described falls under the Zones described in the
Airport Land Use Commission Plan. These Zones are barely mentioned in the Review.

It is the desire of NAPA that the development restrictions of the ALUCP be made clear in
any developments planned.

Sincerely,


Tom McGee